

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 09-20025

D-4, SAMUEL RIDDLE,

HONORABLE AVERN COHN

Defendant.

ORDER DENYING WITHOUT PREJUDICE
DEFENDANT'S MOTION TO DISMISS COUNT 3

This is a criminal case. Before the Court is defendant's motion to dismiss Count 3 of the indictment which charges defendant with "honest services fraud," in violation of 18 U.S.C. § 1346. Defendant says that the statute is unconstitutionally vague. Defendant relies on statements from the oral argument before the Supreme Court challenging the statute's constitutionality which he says indicates that the Supreme Court will strike it down.¹

The government has filed a response, arguing that the motion is simply "a protective measure in the event that the Supreme Court decides . . . that [s]ection 1346 is unconstitutionally vague." Moreover, as the government points out, the law in the Sixth Circuit is that section 1346 is not void for vagueness. See United States v. Frost, 125 F.3d 346, 370-71 (6th Cir. 1997) (holding that the "contours of § 1346" are "sufficiently clear for us to conclude that the statute is not unconstitutionally vague on its

¹See Black v. United States, No. 08-876, and Weyhrauch v. United States, No. 08-1196.

face.”)

Under these circumstances, the motion is DENIED WITHOUT PREJUDICE. Should the Supreme Court rule that section 1346 is unconstitutional, the Court will obviously have to revisit the issue.

Defendant is essentially asking the court to dismiss a count of an indictment based on statements made in oral argument before the Supreme Court regarding the constitutionality of the charging statute. This presupposes that the Court is clairvoyant as to the Supreme Court's decision. It is not.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: January 19, 2010

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, January 19, 2010, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160